

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 20-1744-CFC
	)	
WALMART INC. AND WAL-MART	)	
STORES EAST, LP,	)	
	)	
Defendant.	)	

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Walmart respectfully submits the decision in *United States v. Ridley’s Family Markets, Inc.*, No. 1:20-cv-173 (D. Utah June 7, 2021) (attached as Ex. A) as non-precedential supplemental authority in support of its motion to dismiss (D.I. 26). The decision supports Walmart’s motion in two important respects.

*First*, the court agreed that “the United States cannot seek civil penalties for a violation” of 21 C.F.R. § 1306.06, both as a textual matter and because any contrary reading would “nullify” § 1306.04(a)’s scienter element. (Ex. A at 9-10.) That is one reason why Count II here must be dismissed. (D.I. 27 at 19-22; D.I. 47 at 7-9.)

*Second*, the court recognized that § 1306.04(a) claims must plausibly allege that “individual ... pharmacists who received, reviewed, and filled the prescriptions” were, at minimum, willfully blind to their invalidity. (Ex. A at 7.) Importantly, the Court observed that watering down “the knowledge requirement of § 1306.04(a)” would “severely interfere” with pharmacists’ jobs and “could ultimately damage

patients.” (*Id.* at 10.) Here, any willful-blindness theory fails because the Government does not allege that anyone, let alone any pharmacist “who received, reviewed, and filled the prescriptions at issue” (*id.* at 7), intentionally avoided learning the facts. (*See* D.I. 47 at 2-3.)

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